REPORT TO FEDERAL, PROVINCIAL AND TERRITORIAL MINISTERS

on

INFORMATION SYSTEMS ON SEX OFFENDERS AGAINST CHILDREN AND OTHER VULNERABLE GROUPS

by

THE F/P/T WORKING GROUP ON HIGH RISK OFFENDERS

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FOREWORD:

Federal, Provincial and Territorial (F/P/T) Ministers of Justice and Solicitors General met in Montreal on December 4 and 5, 1997. The joint communiqué released after the meeting noted that:

> Ministers considered proposals by British Columbia for the establishment of a national pedophile registry, to which the public could have direct access, and elimination of pardons for pedophiles.
>
> Ministers agreed that the protection of children and other vulnerable groups from predatory sexual offenders is a key public safety issue.
>
> Ministers also noted the importance of having accurate and timely information about pedophiles and violent offenders, available to law enforcement authorities and to the public.
>
> Accordingly, Ministers directed a working group of senior officials studying high-risk violent offender issues to review the effectiveness of existing information mechanisms including the National Screening System established in 1995 (sic) based on the Canadian Police Information Centre (CPIC); and to examine additional ways to strengthen our ability to protect children and other vulnerable groups, including a national registry; and, to report to Ministers at their next meeting.
>
> Finally, Ministers agreed to consider at their next meeting the issue of restricting pardons, as part of the review of the Criminal Records Act now being conducted by the Solicitor General of Canada.

These matters were referred to an on-going F/P/T Working Group of senior officials on High Risk Offenders. The Working Group has been responsible for recommendations in 1995 which led to the creation of a National Flagging System for high risk offenders and the enactment of Bill C-55 (1997) which, *inter alia,* strengthened the Dangerous Offender provisions of the *Criminal Code*, introduced a new category of Long Term Offender subject to a Long Term Supervision Order, and expanded the peace bond provisions contained in section 810 of the *Criminal Code.* Among other matters the Working Group is currently examining are issues related to public notification and further options for dealing more effectively with high risk offenders.

The Working Group has met in committee on several occasions and received presentations from interested stakeholders (Royal Canadian Mounted Police (RCMP), National Parole Board (NPB) and Volunteer Canada). Written material has been exchanged and reviewed among Working Croup members and the co-chairs from Justice and Solicitor General Canada have attended several conferences and consultation meetings with the volunteer and law enforcement community.

What follows is a discussion of the issues, and some conclusions and recommendations of the Working Group. The objective of the report is to assist Ministers to decide what, if any, further steps they wish to take on these issues.

INTRODUCTION:

Following its mandate the Working Group considered:

- whether current information and screening systems adequately serve to protect children and other vulnerable groups from sexual predators;
- whether public protection could be further improved by introducing enhancements and extensions of current arrangements;
- whether public protection requires creation of a new, national pedophile registry; and
- whether public protection would be improved by restricting access to pardons under the *Criminal Records Act (CRA)* for sex offenders against children or other vulnerable groups.

BACKGROUND:

During the 1990s a number of jurisdictions have adopted a variety of measures aimed at protecting their communities from violent offenders, in particular sex offenders and even more specifically sex offenders who victimize children. These measures have been centered in the United States, often in reaction to high-profile cases.

USA:

One of the most frequently cited cases is that of Megan Kanka who was killed in New Jersey in July, 1994, by a neighbor who was a previously convicted sex offender. This case gave rise to a high-profile campaign that was instrumental in the adoption of legislation in federal and state jurisdictions, commonly referred to as "Megan's Law(s)[i]".

These laws typically provide for:

- a requirement that offenders convicted of certain sex offences register their current address and other personal information with police and remain registered for established periods of time (up to life);
- maintenance of a data base of registered sex offenders;
- public disclosure of some or all of that information on request by an individual and/or proactively to child-assisting organizations and neighborhoods under certain circumstances.

In 1994 the US omnibus *Crime Control Bill* included the *Sexual Offender Tracking and Identification Act* which required every state to enact legislation containing the foregoing features, or fail to qualify for federal criminal justice grants. In the alternative, an FBI database and notification system would be created. Since that time most (well over 40 at last count) states have complied but with wide variations between systems [ii].

UK:

In the United Kingdom the *Sex Offenders Act* came into force on September 1, 1997. The scheme requires certain offenders (including those convicted of rape, indecent assault, and incest by a man) to remain registered with local police for various lengths of time (5 years for non-custodial sentences, 7 years for sentences up to 6 months, 10 years for sentences up to 30 months and life for longer sentences).

Home Office guidelines outlined by Alun Michael, Minister of State for the Home Office (August 11, 1997 Press Release) state that police are authorized, after a case by case analysis, to notify the governing authorities of a school, playgroup or youth activity, communities, and even employers and individual members of the public when there is a justifiable need to do so. However, any public disclosures "...would be exceptions to general policy of confidentiality..." and every case would require an assessment that the potential harm would outweigh the privacy interests of offenders and victims.

The Home Office estimated that 6,000 names would be placed on the registry immediately with another 3,500 to be added annually thereafter. Critics noted that this left 110,000 known sex offenders in the community who would not be registered unless they re-offended (the registry was not "retroactive"). Recent media reports suggest that only one in every four offenders required to register have done so. These and other operational data are being closely monitored for a careful evaluation of the process which is currently being conducted.

CANADA

Calls for a national sex offender registry were also heard in Canada during the early 1990s. Most provinces had established child abuse registries and indexes but all experienced limitations due to lack of comprehensiveness, difficulties in verifying and updating information, and liability concerns. The wide variation in standards and procedures from one jurisdiction to another made systematic sharing of information impossible[iii].

As part of its criminal justice policy agenda the federal government stated its intention to establish a registry of convicted sex offenders[iv]. Consequently, federal departments of the Solicitor General, Health and Justice established an interdepartmental working group in 1993 to study this question and propose practical and constructive options.

The interdepartmental working group studied what was known about registries in other countries, Canadian experience with efforts to establish provincial child abuse registries, and consulted the Royal Canadian Mounted Police with regard to how CPIC could assist in the development of a national automated information system on sex offenders. A Discussion Paper[v] was prepared and regional consultations conducted with approximately 200 individuals representing a broadly representative selection of public and voluntary sector organizations including police, victims, education, child welfare, child assisting agencies and the like[vi].

From this process of study and consultation emerged a broadly based consensus on a number of conclusions:

- a separate registry would, at best, duplicate a part of what already is available through CPIC;
- access to the full criminal history of convicted offenders would be more useful than the narrow criteria of sex offending;
- a separate system would be expensive and difficult to administer, particularly with regard to verification of identity;
- public access to any form of registry raises serious privacy issues;
- information contained on a registry (including CPIC) is of limited value unless supported by a more comprehensive screening process that should be adopted by those concerned with protecting and assisting children and other vulnerable groups.

Consequently, the federal government announced in November, ~~March~~ 1994 a National Screening System for volunteers and employees in positions of trust with children and other vulnerable groups. With the cooperation and collaboration of the police community it was agreed to make CPIC criminal history information available, through local police agencies, to child assisting organizations for screening purposes. At the same time, a partnership with Volunteer Canada (then Canadian Association of Volunteer Bureaux and

Centres) was established to develop a training program for the screening of volunteers and employees in positions of trust.

Volunteer Canada developed training materials and held train-the-trainers workshops in over 200 locations across the country. This training program has become self-sustaining and continues to grow as more groups recognize the necessity to screen their volunteers and employees[vii]. A further phase of this program was announced in June, 1997, for Volunteer Canada to conduct a public information campaign with regard to screening.

REGISTRIES, PROS AND CONS:

Registries of various kinds of official records are an indispensable part of public administration. Where such registries contain highly personal and potentially prejudicial information that is acquired for specific purposes under the authority of the state, there is a legal and moral obligation to protect it from misuse. Where such information may be used to the detriment of the individual, it is generally accepted that there must be a compelling and overriding public interest for so doing. This is particularly so in the criminal justice field, where such records are crucial for public protection, but subject to strong measures to guarantee procedural safeguards including high standards of proof and verification.

Today, CPIC provides Canada with a national registry of ~~is served in the~~ criminal justice information~~field by CPIC~~. It maintains a national database of criminal history records and related information that is supported by fingerprints. ~~and contributed to and used by~~ ~~v~~Virtually all law enforcement agencies in the country contribute to and make use of this information system. ~~It~~CPIC also maintains a communication network so this information may be shared between and among law enforcement agencies. Direct access to CPIC information is strictly limited to accredited law enforcement agencies but can be accessed for child protection screening purposes through the National Screening System that has been put in place. In practical terms CPIC *is* a national registry of sex offenders - and much more. Arguably, to duplicate a part of this "registry" in another information system would be wasteful of scarce resources that could be put to better use. It is worth noting that in the United States, to some extent at least, registries have been resorted to because no such comprehensive national criminal history system already existed[viii].

SEX OFFENDER/PEDOPHILE REGISTRIES AND PUBLIC NOTIFICATION:

Advocates of a distinct sex offender or pedophile registry generally call for two additional features that CPIC does not provide: *compulsory registration* of current address for some period of time beyond the end of any sentence, and *public access* to names and locations of registered offenders. Indeed, the rationale for these features is the strongest argument for such registration systems: "...the public has a right to know if sex offenders are living in their midst and to take appropriate precautions...". This is an

important consideration that deserves to be examined carefully. However, these additional features have been found to suffer significant limitations in effectively providing the public with useful information.

Public Access:

CPIC information is generally available to police and not directly to the public. However, in legitimate circumstances members of the public can obtain police assistance to search CPIC for information concerning an offender with the latter's consent. Employers often require volunteers or employees to consent to a CPIC search before they are hired in positions of trust. This approach allows for complete information to be obtained by members of the public who require it, while providing a measure of protection to those who have a criminal record. Whether this approach is better than a registry that would provide unrestricted public access to certain information compiled for that purpose can be addressed in part by considering certain limitations of such systems under the following headings.

Compliance:

Even w~~W~~here registration is compulsory, compliance rates have often been ~~been~~ found ~~often~~ to be low[ix]. Many critics of registries fear that they will have the effect of driving sex offenders underground, causing them to adopt deceptive tactics and to move anonymously from one community to another. Conceivably those who do so are the predatory offenders from whom the community has the most to fear. Virtually all compulsory registration systems are passively enforced by police: if they encounter an individual who should be registered but is not, they charge him with the prescribed offence. If they encounter that individual because of a new offence, they lay an additional charge. It has been estimated[x] that, to actively enforce registration by following up offenders and verifying addresses, would take as much as half of a police department's resources.

Limited Information:

Generally speaking, the greater the public access to registry information, the more limited it is. For example in California where a CD-ROM of 60,000 registered sex offenders can be obtained, their locations are indicated only by postal code. Additional information can be obtained by *bona fide* requestors but with only the publicly accessible information the average person would not be able to determine whether a neighbor for example was a registered sex offender. This level of access may do more to instill public alarm than to allow precautionary steps to be taken.

Verification:

Without fingerprint identification, it is never possible to be certain that a registered individual is the one about whom an inquiry is received. Typically, a community member would want to make a confidential inquiry about an individual who is of concern. To do so a name might be submitted, possibly a birthdate, neither of which can be reliably confirmed. Some registries require information such as social security numbers before a search will be conducted. Even then, falsification of records, misspelled names, duplicate names and the like can lead to serious problems of misidentification.

Comprehensiveness:

Even where the foregoing limitations can be overcome, it must be acknowledged that a registry that contains only records of convicted sex offenders (or pedophiles or child abusers) will contain only a fraction of those about whom the community should be concerned. There are, of course, the unconvicted who would not be identified on either a criminal history or a sex offender database. But in addition there are many who would not be identifiable by the charge for which they were convicted due to plea negotiations and evidentiary problems. A pedophile or child abuse registry would not contain those offenders whose victims were adults nor would it contain those individuals convicted of offences that might also be of related concern such as "victimless" sex offences or, in the case of volunteers, serious impaired driving or assault convictions.

Social Consequences:

Registries with the foregoing limitations may on the one hand inflame public fears by giving the impression that there are many individuals in their midst to be fearful of without being able to verify whether or not they have anything to personally fear. On the other hand, they can instill a false sense of security if an inquiry results in a nil response either because the individual has not yet offended or because they have been identified mistakenly or failed to be identified. There is also the danger of vigilante action being taken when an offender is identified (or mistakenly identified) and there are now many examples of this having occurred.

CANADIAN POLICE INFORMATION CENTRE (CPIC):

The CPIC system is less susceptible to the foregoing limitations. As it is not dependent upon compulsory registration, compliance is not a problem. It could easily accept current residential information that would be input by police forces, but arguably compliance problems and resource considerations (i.e., to verify identities) do not recommend this measure. CPIC contains comprehensive and reliable information that is maintained by police forces on the basis of documentary court records and fingerprints. While the public cannot have dial-up access to it there is reasonable access to records through local police forces for screening purposes.

Like any other system CPIC is not perfect, but should additional resources be made available for improving information systems for the protection of children and other vulnerable sectors, they would be better spent on enhancing CPIC, modernizing it and improving its ability to carry confidential police intelligence information to aid law enforcement with high risk individuals. In combination with the National Screening System, provincial public notification schemes and certain enhancements, CPIC provides a sound basis for public protection purposes.

Recommendation 1.

It is recommended that Ministers endorse the Canadian Police Information Centre data system, with enhancements identified in this report, as a sound basis for screening systems to protect children and other vulnerable groups from convicted sexual offenders.

PROVINCIAL REGISTRIES:

Implicit in the foregoing recommendation is the conclusion that a new national pedophile registry is not required. In the absence of a national registry system, some jurisdictions may consider a provincial/territorial sex offender or pedophile registry to be appropriate in their unique circumstances. The information that would be contained on such a registry is not known. British Columbia has indicated that such a stand-alone registry is being considered. It could contain information that is now included in its Protection Order Registry and information generated by screenings conducted pursuant to its *Criminal Records Review Act.* Ontario has also expressed an intention to develop its own registry system but it is not known what information it would be likely to contain Disclosure of information contained in a provincial registry would be subject to the provisions of its own freedom of information legislation and policies.

Where provincial registries propose to include and disclose information generated by another jurisdiction the latter's consent and cooperation would be required. If such information were drawn down from a national system such as CPIC, consensus would be required among all of the partners who contribute information to that system and who jointly govern its administration including access to its content. Failure to achieve this degree of consensus could result in other jurisdictions seeking to restrict access to the shared system by the jurisdiction with its own registry and/or becoming reluctant to contribute information to the shared system.

Recommendation 2.

It is recommended that any jurisdiction considering a provincial pedophile registry that would contain information generated by other jurisdictions and to which the public would have direct access, consult fully with all other jurisdictions during the development phase.

PUBLIC NOTIFICATION:

CPIC is a police information system and, consequently, access to it is limited to accredited law enforcement and allied agencies. It provides no direct access to the general public or other unauthorized parties. However, it can contribute to authorized public notification procedures. It provides the primary avenue for criminal history checks which are a part of the National Screening System which is discussed below. It also provides criminal history information for review by provincially-established review bodies in deciding whether or not to authorize disclosure by police of personal information as part of a *public notification.*

Community Notification Mechanisms:

Most, but not all, jurisdictions have established a notification committee or similar process by law or by policy. These committees consider referrals from police agencies that are recommending that the community be notified about an offender who they believe to pose a threat to others. Many of the procedures and practices of these committees are still in a state of evolution and jurisdictions are consulting and learning from one another.

Following earlier discussions among F/P/T Ministers and Deputies, and a national conference on public notification hosted by Manitoba, a multilateral working group of senior officials was formed, chaired by Manitoba, to consider public notification issues. This "Community Notification Advisory Committee" (CNAC) was established to share information and consider approaches and improvements to public notification procedures. It is currently considering issues such as standardization of policies and procedures and exchanging information between jurisdictions. This process is still under way and reports are submitted to F/P/T Ministers and Deputies periodically.

One of the issues being considered by CNAC is whether information about notifications can and should be shared among jurisdictions. This would require that jurisdictions agree on common, standardized approaches to fundamental issues such as verification of information, identity of individuals and threshold criteria for notification. With sufficient consensus it would be feasible to exchange such information via an automated data system. CPIC officials have agreed to consider whether and when its network might be used to facilitate such a process.

Recommendation 3.

It is recommended that the Community Notification Advisory Committee continue to examine the issue of standardized policies and procedures and, at its request, that CPIC consider whether it could facilitate the transfer of information about public notifications among jurisdictions.

VIEWS AND POSITIONS OF STAKEHOLDERS:

THE VOLUNTARY SECTOR:

Representatives of the voluntary sector have expressed opposition to the creation of a new sex offender registry out of recognition of the limitations discussed above. In the alternative, recognizing that more should be done to protect children and other vulnerable individuals, they have called for resources to be directed to practical improvements to current measures.

Women's Advocacy Groups:

The Executive Director of the Canadian Association of Elizabeth Fry Societies (CAEFS) reports that CAEFS and other women's advocacy groups would support a public information campaign to assist parents in protecting their children ~~promote parental responsibility~~ and to promote practical steps that can be taken to ensure that children are not exposed to undue risk of victimization. Simple practical steps and precautions could

be proposed including asking youth organizations in which they participate about their screening policies to ensure that they are adequate. Volunteer Canada, which is currently conducting a public education campaign of its own, is interested in supporting such an effort as is the Ministry of the Solicitor General (Canada). To be most effective, such an initiative can benefit from the support and participation of as wide an array of partners as possible.

Recommendation 4.

It is recommended that all jurisdictions support, help develop and promote public education initiatives that would promote parental involvement and practical steps that they can take to protect their children from victimization, including the request that youth organizations (that are supported by the jurisdictions) adopt adequate screening policies and practices.

Volunteer Organizations:

Volunteer Canada, through over 200 local offices which recruit, supply and help train volunteers for community organizations, reaches into the heart of the volunteer movement in Canada. In partnership with the federal government, Volunteer Canada has been instrumental in developing the National Screening System, developing and delivering a highly effective training package around screening, and promoting the adoption of screening policies by voluntary organizations and agencies.

The Executive Director of Volunteer Canada strongly opposes the creation of a new, separate, national pedophile registry not only because of the limitations discussed earlier, but also because it wrongly suggests that simply checking a records system, including CPIC, ~~is~~ is an adequate substitute for a thorough and comprehensive screening process. In her view a criminal history record check is only one part, and not the most important part, of a sufficient screening process. Such a process consists of at least ten components (summarized in Annex "A") starting with an assessment of risk posed by a particular activity in which a volunteer (or employee) will be engaged. The less risky the situation the less extensive the screening may be. Personal interviews with the applicant (or incumbent), reference checks, a criminal history record check, on-going supervision and evaluation, all play a part and all should be set out in an explicit policy document that can be communicated and used as a guide[xi].

No registry can substitute for a comprehensive screening process, and no new registry could be expected to be more effective than the CPIC system which is strongly endorsed by Volunteer Canada. While the comprehensiveness and reliability of the records system is very important to the screening process, it is the adoption of comprehensive screening policies by agencies and organizations that is the most important measure to protect children and vulnerable adults.

Recommendation 5.

It is recommended that all jurisdictions:

a) **establish policies that define and promote the adoption of adequate screening policies and procedures by organizations and agencies who place volunteers and employees in positions of trust with children and other vulnerable individuals; and**

b) **~~including~~ consider making such screening systems mandatory for agencies under their direct control, license or in receipt of public funding.**

THE POLICE COMMUNITY:

Screening:

Police have generally supported the National Screening System through their initial assistance in designing and implementing it, and through their on-going participation in its use in support of voluntary sector requestors. While local arrangements vary somewhat - for example some police agencies charge a user fee and others do not - all reports are that the level of cooperation is high.

Concerns have been expressed by some police agencies about the demand screening places on their resources. Local arrangements vary in that some municipal and provincial authorities have made specific budgetary provision for screening and some have not, or have done so to a more limited extent. In establishing the National Screening System the philosophy was that it would be an insurmountable obstacle to assign responsibility for funding support to any one of the participants or levels of government and that these demands should be shared among the federal government (through providing CPIC services without charge), by the voluntary sector (through providing staff resources for screening and paying user fees where this is required) and by local police agencies within their structure (i.e. municipalities, police boards and provincial/territorial governments).

Among their 1997 resolutions the Canadian Association of Chiefs of Police (CACP) called for a "a registry of known and suspected paedophiles/sex offenders". The CACP position was later expanded and clarified in a letter to the federal Solicitor General and Minister of Justice:

> What is intended, from the CACP point of view, is not a registry to which the public have direct access. Rather, the registry would be a criminal intelligence data bank administered by CISC [Criminal Intelligence Service Canada], to which accredited police agencies and their people would have exclusive access to develop threat assessments/screening of persons who either are or are about to be assumed in paid or volunteer positions with responsibility over the well-being of children.[xii]

While CACP recognized that "...the background of convicted/known paedophiles ....can now be determined within the CPIC system ...", it suggested that "...with some modification that includes the involvement of the criminal intelligence analytical capabilities of CISC, the proposed registry could form part of an expanded Special [Interest Police] Category within CPIC."

Recommendation 6.

It is recommended that all jurisdictions support the involvement of the Criminal Intelligence Service Canada in using police intelligence information to assess the risk posed by known and suspected sex offenders against children. Further development of this capability could be addressed in the context of the National Police Services Review that is currently underway by Solicitor General Canada in consultation with partners and stakeholders.

PARDONS:

Concern has been expressed that the effectiveness of screening is reduced by the effect of pardons pursuant to the *Criminal Records Act.*

THE PARDON PROCESS:

Following a waiting period of at least 3 years after completion of the penalty for a summary conviction offence and upon application (including submission of fingerprints),

pardons are issued by the Clemency Division of the National Parole Board. No discretion is available to the Board so long as the individual has been conviction-free. In the case of indictable offences the waiting period is at least 5 years. Upon application, the NPB conducts an investigation to confirm that the applicant has been of good behavior during that period. The investigation includes a check of CPIC and the RCMP case management system (PIRS) as well as a local police records check with police in each location where the applicant has resided during the preceding 5 years. Police are asked to provide all relevant information in their possession. Where there is cause for concern, Clemency Division staff consult the police agency in question.

After completion of the investigation, the NPB has the authority to grant or deny the pardon. Where the application is denied, the applicant can make further representations to the Board and can appeal the decision in Federal Court. The applicant can reapply after a further waiting period of one year. Pardons can be revoked if the NPB receives information that the pardon recipient presented false information or is no longer of good behavior. The effect of the pardon automatically ceases by process of law if there is a new indictable conviction.

Effect of a Pardon:

The issuance of a pardon does not destroy or expunge the criminal record, but causes it to be sealed and set apart in all record systems under federal control, including CPIC. These records are maintained by CPIC in a separate confidential database at least until the pardon recipient reaches 80 years of age. While not binding on provincial jurisdictions, the reference in the Act to sealing "judicial records" is strong expression of the spirit of the Act with which virtually all police agencies, courts and Attorneys General comply. The stated purpose of sealing the record is so that it will no longer reflect adversely on the ex-offender. The most common reasons for requesting pardons are for purposes of employment and travel.

Pardon Statistics:

On average, over the past ten years, 15,000 pardons have been granted or issued under the *CRA* each year. While this number may appear large, it is a small proportion of the approximately two and a half million records held by CPIC. The grant rate is also high. Over 99% of applicants receive a pardon. Conversely, pardon revocations are quite infrequent. Since 1970, almost a quarter of a million pardons have been granted or issued while there have been 5,380 revocations or cessations[xiii].

Unsealing Pardons:

Under the *CRA,* identification information is released to police agencies who obtain fingerprints at the scene of a crime or death of an unidentified person. The *CRA* also authorizes the Solicitor General of Canada to unseal the entire pardoned record for reasons of national security and the administration of justice. Where it is judged to be desirable, such unsealing can be authorized to assist, for example, with a criminal investigation or screening of candidates for sensitive public positions such as police or judges. Unsealing can be authorized for screening persons in positions of trust in relation to children and other vulnerable persons.

When CPIC staff receive a request for a record check supported by fingerprints, the pardon data base is included in the search. When a sealed record is discovered, they routinely refer it to the Solicitor General to consider unsealing. If the Solicitor General authorizes unsealing of the record it is provided to the requestor for the purpose of the request. However, the pardon remains in force for every other purpose. Although the authority to unseal pardoned records is entirely within the discretion of the Solicitor General, unsealing would normally take place where the sealed record is considered relevant to the purpose for which the record was requested consistent with the *CRA*. In making his determination, the Solicitor General considers advice received from the Deputy Solicitor General.

Impact of Pardon on Screening Searches:

Current provisions of the *CRA* and administrative procedures allow for access to sealed records of pedophiles and other persons in positions of trust when a criminal history record search is conducted. If police know or suspect that there is a pardoned record, they will submit fingerprints causing the sealed record to be submitted to the Solicitor General for review. However, where police are not aware that a pardon has been obtained, they may not routinely submit fingerprints to aid their search for a record. In such cases a routine query of CPIC will not indicate that such a record or pardon exists.

Options to Improve Access to Sealed Records for Screening:

Several options could be considered to ensure that all relevant records are made available for screening purposes:

1. Routine Submission of Fingerprints:

When conducting a screening records check police could submit fingerprints in every case. Some police agencies already follow this practice. However this procedure would be resource intensive particularly where there are high volumes of screening requests. This procedure would also lengthen the time required to

complete a screening process. In some cases several pieces of official picture identification are sufficient to establish the identity of the applicant and submission of fingerprints is considered unnecessary, especially where a record *is* found. However, in the majority of cases where there is no indication of a record on CPIC, fingerprints would be required to be entirely sure.

2. *Denial of Pardons to Pedophiles:*

Pardons could simply be denied to offenders convicted of certain sex offences where the victim was a child or other vulnerable person. The Canadian Association of Police Boards, for example, adopted such a resolution in 1997. This would be a very imprecise tool given that a conviction does not always reflect the behavior behind it, for example, a break and enter charge where the intention was to sexually assault. It would also be difficult to find the "right" formula of offence and victim to identify those offenders to be denied access to pardons; many anomalies could be expected. But most important, this approach could be unfair to large numbers of ex-offenders. Even studies with exceptionally long follow-up periods of up to 20 years find that about 65% of offenders who have committed sex offences against children have had no new conviction[xiv]. These good candidates for a pardon would be denied the opportunity unfairly.

3. *Exclusion of Pedophiles from Summary Conviction Provisions:*

Sex offenders against children who are convicted of summary offences are entitled by law to receive a pardon after a 3 year waiting period. They could be excluded from the *CRA* summary conviction scheme and subjected to the same provisions as those convicted by way of indictment. Police could also be authorized (and required) to take fingerprints in such cases. However, they are already authorized to take fingerprints in so called hybrid offences which can be prosecuted either by summary or indictable procedure. Since these are arguably the most serious of the summary offences, it might be more practical for police to routinely take fingerprints in these cases as many police agencies now do. The requirement to take fingerprints for only sex offenders would be very complex to establish in law and to administer. It would be resource intensive and it would be subject to severe Charter scrutiny.

4. *Longer Waiting Periods:*

Short of outright denial of access to a pardon, pedophiles could be required to wait for longer periods of time before a pardon could be considered. This option would face a severe test of its reasonableness under the Charter as would option 2. This approach might find additional support from the finding that those

pedophiles who do re-offend do so over a longer period of time. While pedophiles present a comparatively low risk of re-offending (they recidivate at less than half the rate of offenders in general) they tend to do so over a longer period of time. While the majority of offenders who do recidivate do so during the first 6 years, the comparable period for pedophiles is in the range of 10 to 20 years[xv].

5. *More Stringent Parole Board Investigations and Criteria:*

The NPB could adopt especially rigorous investigation standards in the case of pedophiles and apply especially strict granting criteria. More rigorous investigations would require the cooperation of local police, many of whom already experience difficulty finding resources for this purpose. However, the better and more in depth the information provided to the Board, the more rigorous will be their review of the case as a consequence. Establishing special criteria for this group of offenders (which once again would be difficult to define effectively) would also face serious Charter risk.

6. *Flagging Sealed Records on CPIC:*

While not without Charter risk, it might be possible to flag selected pardoned records on CPIC. For example, a notation could be entered on CPIC: "For screening purposes submit fingerprints". A ~~While~~ knowledgeable person with access to CPIC could deduce from this that there is a pardoned record, but this would not be explicit and no details of the record would be provided. However, when screening applicants for positions of trust this would signal to police that fingerprints should be submitted in these cases, causing the sealed record to be reviewed for unsealing by the Solicitor General. This process could be implemented with minimal resource requirements, it would be least prejudicial to pardon recipients and would interfere the least with the integrity of the *CRA*. This option would also be most feasible to apply to victims from other vulnerable groups in addition to children.

Selecting an Option:

It is likely that prejudicial special treatment for this group of offenders would be found to violate Charter guarantees unless it can be shown to be reasonable. Moreover, questions of liability would arise particularly because pardons are often requested to facilitate employment opportunities and/or business travel. Finally, any scheme that would single out one group for special treatment under the Act would very likely lead to demands to treat an ever widening group of offences in a similar fashion and in so doing to erode the integrity of the *CRA* and its beneficial effects for the vast majority of pardon recipients.

Any test of reasonableness would include an assessment of the scope of the problem and the proportionality of the solution. To better understand the scope of the problem (i.e. number of sex offenders or child abusers that might escape detection in a screening search), a sample of pardon cases was reviewed[xvi]. Extrapolating from that sample (170 granted pardons, 104 denials and 115 revocations during the four years from 1988 to 1991 inclusive) it can be estimated that:

- of the 227,146 pardons granted or issued over the past 27 years, 12,039 (5.3%) would have a sex offence on record (pedophiles could not easily be identified for this purpose);
- of the 5,380 revocations during that time, 845 (15.7%) would have a prior sex offence on record;
- of the 845 revocations with a prior sex offence, 704 (83.3%) would be for the commission of a new sex offence;
- the proportion of pedophiles among sex offenders found in other studies suggests that 458 of the repeat sex offenders would have offended against children.

These research findings suggest that the scale of the problem created by the granting of pardons to pedophiles is modest (although not inconsequential): over a 25 year period an estimated 704 sex offenders including 458 child abusers would have received a pardon and later been convicted of another sex offence. During this same period approximately 11,334 offenders with a sex offence on their record would have received a pardon and not re-offended sexually[xvii]. Any scheme that would apply special restrictive measures to all sex offenders would also have an unwarranted impact on this much larger group. A more targeted yet effective screening approach may be appropriate.

Recommendation 7.

It is recommended that CPIC policy be amended so that a notation is placed on the CPIC system when a sex offender whose victim was a child or member of another vulnerable group receives a pardon and his or her criminal history record is sealed (Option 6).

Recommendation 8.

It is recommended that, where the legal authority exists, all police agencies take fingerprints in every case where an offender is charged or convicted of a sex offence where the victim is a child or a member of another vulnerable group.

Recommendation 9.

It is recommended that all jurisdictions encourage or require local police to:

- **conduct thorough background and record checks when conducting pardon application investigations,**
- **share all relevant information with the National Parole Board, and**
- **assign particular priority to cases of sex offenders who have victimized children or other vulnerable persons.**

Recommendation 10.

It is recommended that the National Parole Board continue to carefully review all available information when considering the application for a pardon by a sex offender who has victimized a child or member of another vulnerable group and exercise the highest standard of caution in these cases.

CONCLUSION:

The High Risk Offenders Working Group studied carefully the questions referred to it by F/P/T Ministers. It recognized public protection to be its central focus and, in particular the protection of children and other vulnerable groups from sexual predators. It concluded generally (with the exception of two jurisdictions) that a new, national pedophile or sex offender registry would not significantly improve upon the status quo in the achievement of those objectives.

There is now a substantial basis for achieving public protection goals provided by:

- the national data system of criminal history information (CPIC);
- active screening of volunteers and others in positions of trust based in part on criminal record checks: and
- public notification schemes that exist in almost all jurisdictions.

The Working Group recognized that improvements and further progress can be made in all of these areas and made the foregoing 10 recommendations (also listed in Annex "B"). For example, the recommendations propose enhancements that could be made to CPIC including improved criminal intelligence information, and expansion of the use of comprehensive screening systems.

With regard to pardons issued to sex offenders, review of a sample of files revealed that the number of sex offenders who receive a pardon and later are re-convicted of a sex offence is small but cannot be regarded as insignificant. While the scale of the problem would not justify denying access to pardons for sex offenders, it is proposed that such cases be identified in the CPIC system in a way that would allow consideration of unsealing these records for screening purposes.

While there was not unanimous agreement among all Working Group members on all of the conclusions and recommendations of the report, there was substantial consensus. It should, therefore, provide a sound basis for discussion of the issues and consideration of the recommendations by Ministers.

Annex "A"

SCREENING – 10 STEPS TO A SAFER COMMUNITY

1. Determining the Risk

The first principle of risk management is to do all you can to prevent problems from occurring in the first place. Organizations can control the risk in their programs by looking at the possibilities of loss or injury that might arise in programs or services and take steps to minimize, prevent or eliminate the risk altogether.

2. Position Design & Position Description

The responsibilities in each position determine the position's level of risk. Careful position design and clear position description send the message that your organization is serious about screening. By including dos and don'ts in your position descriptions, responsibilities and expectations are clear.

3. Recruitment

Recruitment of volunteers is usually done less formally than the recruitment of employees. One of the ways to move to a formal recruitment process is to post

notices or send home requests for volunteers with your clients. Recruitment materials should indicate that your organization screens applicants.

4. Application Form

An application form can only ask for information related to the requirements of the position being filled. Be aware that the Canadian Charter of Human Rights protects applicants. Application forms can ask permission to do a police records check or any other screening measure that may be required for that position (medical check).

5. Interviews

Interviews help ensure that you hire people who meet your requirements and "fit" your organization. Use the position description to ensure that the candidate understands the specific requirements of the position.

6. Reference Checks

Do not assume that applicants will only give you names of people who will speak well of them. People often do not expect that references will be followed up. By identifying the level of trust required in the position and asking specific questions you can determine quite a bit about an applicant's suitability. (e.g., Joe will be working closely with children and will be alone with them...would you be comfortable with Joe having these kinds of relationships with your child?)

7. Police Records Check (PRCs)

PRCs are one step on a 10 step screening process. It is important to realize there are a number of limitations to PRCs. For example, they encourage a false sense of security, the individual may be using an alias, there are lags between the date of conviction and the date the information is entered into the system, to name three. Although there are limitations, PRCs do serve a purpose, particularly for high-risk positions when the organization is committed to a full and complete screening process. The PRC signals, in a very public way, that the organization is concerned about the safety of its clients.

8. Orientation and Training

Responsibility does not end once the volunteer is in place – ongoing vigilance is necessary. Orientation and training sessions offer the opportunity to observe volunteers in a social setting and provide information on the organization's policies and procedures. Probation periods give both the organization and the volunteer time to learn more about each other.

9. Supervision and Evaluation

The greater the risk in a position, the more frequent and intense the supervision and evaluation process should be. Frequent feedback in the first year is particularly important. Evaluations must be based on position descriptions.

10. Participant or Client Follow-ups

Regular ongoing contact with clients and family members can act as an effective deterrent to someone who might otherwise do harm or go undetected. It is important that volunteers are aware of any follow-up activities that may occur including spot checks, which are a possibility in high-risk positions.

Annex "B"

LIST OF RECOMMENDATIONS

Recommendation 1.

It is recommended that Ministers endorse the Canadian Police Information Centre data system, with enhancements identified in this report, as a sound basis for screening systems to protect children and other vulnerable groups from convicted sexual offenders.

Recommendation 2.

It is recommended that any jurisdiction considering a provincial pedophile registry that would contain information generated by other jurisdictions and to which the public would have direct access, consult fully with all other jurisdictions during the development phase.

Recommendation 3.

It is recommended that the Community Notification Advisory Committee continue to examine the issue of standardized policies and procedures and, at its request, that CPIC consider whether it could facilitate the transfer of information about public notifications among jurisdictions.

Recommendation 4.

It is recommended that all jurisdictions support, help develop and promote public education initiatives that would promote parental involvement and practical steps that they can take to protect their children from victimization, including the request that youth organizations (that are supported by the jurisdictions) adopt adequate screening policies and practices.

Recommendation 5.

It is recommended that all jurisdictions:

a) establish policies that define and promote the adoption of adequate screening policies and procedures by organizations and agencies who place volunteers and employees in positions of trust with children and other vulnerable individuals; and

b) consider making such screening systems mandatory for agencies under their direct control, license or in receipt of public funding.

Recommendation 6.

It is recommended that all jurisdictions support the involvement of the Criminal Intelligence Service Canada in using police intelligence information to assess the risk posed by known and suspected sex offenders against children. Further development of this capability could be addressed in the context of the National Police Services Review that is currently underway by Solicitor General Canada in consultation with partners and stakeholders.

Recommendation 7.

It is recommended that CPIC policy be amended so that a notation is placed on the CPIC system when a sex offender whose victim was a child or member of another vulnerable group receives a pardon and his or her criminal history record is sealed (Option 6).

Recommendation 8.

It is recommended that, where the legal authority exists, all police agencies take fingerprints in every case where an offender is charged or convicted of a sex offence where the victim is a child or a member of another vulnerable group.

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Recommendation 10.

It is recommended that the National Parole Board continue to carefully review all available information when considering the application for a pardon by a sex offender who has victimized a child or member of another vulnerable group and exercise the highest standard of caution in these cases.

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[i] *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.* 42 U.S.C., 14071, 1994.

[ii] Coflin, Jim, *Sex Offender Registration and Community Notification Legislation, Policy and Procedures*, and *Sex Offender Registration and Community Notification (Summary),* (July, 1997), prepared for Ministry of the Solicitor General, Canada.

[iii] Canada, Federal-Provincial Working Group on Child and Family Service Information, *Child Welfare in Canada: The Role of Provincial and Territorial Authorities in Cases of Child Abuse*, 1994 (National Clearinghouse on Family Violence, Health Canada).

[iv] *A Liberal Perspective on Crime and Justice Issues,* April, 1993.

[v] Canada, Health, Justice and Solicitor General Canada, Interdepartmental Working Group on Information Systems on Child Sex Offenders: *Information Systems on Child Sex Offenders: A Discussion Paper*, 1993.

[vi] Canada, Solicitor General, Health, and Justice Canada. *Report of the Federal ad hoc Interdepartmental Working Group on Information Systems on Child Sex Offenders: Screening of Volunteers and Employees in Child-Sensitive Positions, 1994.*

[vii] Volunteer Canada, *National Education Campaign on Screening: Final Report, March,* 1997.

[viii] Coflin, Jim, *Sex Offender Registration and Community Notification Legislation, Policy and Procedures,* July 1997, p.17.

[ix] *Ibid.*, p.18 ff.

[x] A Washington State police official, speaking at a conference in Vancouver BC circa. 1996.

[xi] Volunteer Canada, The Screening Handbook: Protecting Clients, Staff and the Community, Ottawa, 1996.
[xii] Revocations are decisions made by the Parole Board due to misconduct by the pardon recipient; cessations are automatic when there is a connection for a new indictable offence.

[xiii]Correspondence from Julian Fantino, Chief of the London Police and co-chair of the CACP Legislation and Policy Committee, January 6, 1998.

[xiv] Hanson, R. K., Scott, H., & Steffy, R. A., "A comparison of child molesters and nonsexual criminals: Risk predictors and long-term recidivism". Journal of Research in Crime and Delinquency, vol. 32, no. 3, 325-337 (1995).

[xv] Hanson, R. K., Steffy, R. A., & Gauthier, R., "Long-term recidivism of child molesters". Journal of Consulting and Clinical Psychology, vol. 61, 646-652 (1993).

[xvi] These estimates should be read with caution. The estimates are likely to be inflated due to the fact that the samples were drawn from years when sex offence reporting was higher than in earlier years to which the sample rates are being applied. It should also be noted that the "revoked/cessation" sample contained pardons granted earlier since the average time since the original offence was 9 years.

[xvii] This does not discount the probability that some convicted pedophiles who have received pardons (as well as others who have not) will continue to offend but will go undetected. However, the relevant issue here is the extent to which the existence of a pardon could exacerbate the problem by allowing the evasion of detection during a screening check, and what measures can be instituted to offset this risk.